IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/10/2003

CORAM

THE HONOURABLE MR.JUSTICE A.KULASEKARAN

SECOND APPEAL No.1598 OF 2003
AND
C.M.P.No.14694 OF 2003

D.Dhanapal ... Appellant

-Vs-

D.David Livingstone ... Respondent

!For appellant : Mr.T.Dhanyakumar

^For Respondent : ---

Appeal against the judgment and decree dated 20.12.2002 made in A.S.No.296 of 2002 on the file of the Principal District Judge, Namakkal, as against the judgment and decree dated 20.09.2000 made in O.S.No.3 81 of 1998 on the file of the Principal District Munsif, Namakkal.

:J U D G M E N T

When the matter is listed for admission, after hearing the counsel for the appellant, the same is disposed of in limine.
2. Defendant, who lost before both the Courts below, has filed this Second Appeal.
3. Suit in O.S.No.381 of 1998 was filed by the respondent herein for declaration that he continues to be the Secretary of the Society and for consequential injunction, restraining the appellant herein from interfering with the normal functioning as Secretary of the Society, which is registered under the Tamil Nadu Societies Registration Act.
4. Before the trial Court, the respondent herein examined himself as P.W.1 and one Gnanadikan as P.W.2 and marked Ex.A-1 dated 23.09.1967 , the Society's Memorandum and By-laws; Ex.A-2, the registration certificate of the Society; Ex.A-3, extract of the Minutes of the General Body Meeting; Ex.A-4, resignation letter submitted by the appellant herein. On the other hand, the appellant herein had not let any oral evidence and only marked Ex.B-1 dated 29.01.1997, original letter sent by P.W.2 to P.W.1.
5. The appellant herein canvassed before the Courts below that the Civil Court has no jurisdiction to entertain the suit; the respondent herein was removed from the post of Secretary of the Society on 27.01 .1997 and an alternative remedy was availed of by the respondent before the appellate authority and, hence, the suit filed was untenable.

6. The respondent herein had canvassed that the Tamil Nadu Societies Registration Act neither expressly nor impliedly bar the jurisdiction of the Civil Court; the appellant herein had not placed any evidence either oral or documentary to show that the respondent was removed from the post of Secretary in terms of the by-laws; only an application, pointing out the illegal claim of the appellant without the requisite signatures of 1/3 members of the Society, was filed, which would not mean that the remedy sought for was availed under Sections 36 of the Act.
7. The Courts below concurrently held that the appellant herein had not placed any document to show that a resolution was passed on 27.01 .1997, removing the respondent herein from the post of Secretary. On the Contrary, the respondent herein had produced the Minutes Book, which does not contain the minutes of the meeting, said to have been held on 27.01.1997, removing the respondent. The Courts below also concurrently held that under Rule 32 of the By-laws of the Society, if any vacancy amongst the office bearers during the year shall be filled by the governing body either from amongst its own members or from amongst the members of the society and the elected person, filling such vacancy shall hold office until the next Annual General Meeting of the Society. Under by-law 10, if at any time, any member is requested by one month notice in writing by 3/4th of all the other members to retire, he shall ipso facto cease to be a member. The appellant herein has also not established that the said by-law 10 was invoked against the respondent herein. The above said facts are not controverted before me.
8. The substantial questions of law, which arise for consideration in this Second Appeal, are :
i) Whether the suit is maintainable ?
ii) Whether the respondent is estopped from filing a suit ?
iii) Whether the respondent herein is entitled to the reliefs, as claimed in the plaint ?

9. Section 9 of the Code of Civil Procedure read as follows:
9.Courts to try all civil suits unless barred :- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.
Explanation I : A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.
Explanation II : For the purpose of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

10. It is seen from Section 9 C.P.C. that every presumption should be made in favour of the jurisdiction of a Civil Court. The exclusion of jurisdiction of Civil Courts is not to be readily inferred, until such exclusion explicitly expressed or clearly implied.
11. In AIR 2000 SUPREME COURT 2220 (State of Andhra Pradesh v. Manjeti Laxmi Kantha Rao), the Supreme Court has held as under:
"The test adopted in examining such a question is (I) whether the legislative intent to exclude arises explicitly or by necessary implication,

and (II) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. Where a statute gives finality to the orders of the special tribunals, jurisdiction of the civil Courts must be held to be excluded if there is adequate remedy to do what the civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure."

12. In AIR 1995 SUPREME COURT 2001 (P.M.A.Metropolitan v. Moran Mar Marthoma), the Supreme Court has held as under :
"One of the basic principles of law is that every right has a remedy. Ubi Jus ibis remediem is the well known maxim. Every civil suit is cognizable unless it is barred, "there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute, one may, at one's peril, bring a suit of one's choice. It is no answer to a suit howsoever frivolous the claim, that the law confers no such right to sue 'Smt.Ganga Bai v. Vijay Kumar, AIR 1 974 SC 1126. The expansive nature of the Section is demonstrated by use of phraseology both positive and negative. The earlier part opens the door widely and latter debars entry to only those which are expressly or impliedly barred. The two explanations, one existing from inception and latter added in 1976 bring out clearly the legislative intention of extending operation of the Section to such religious matters where right to property or office is involved irrespective of whether any fee is attached to the office or not. The language used is simple but explicit and clear. It is structured on the basic principle of a civilised jurisprudence that absence of machinery for enforcement of right renders it nugatory. The heading which is normally key to the Section brings out unequivocally that all civil suits are cognizable unless barred. What is

meant by it is explained further by widening the ambit of the Section by use of the word 'shall' and the expression, all suits of a civil nature unless expressly or impliedly barred.'.

13. The above said judgments of the Hon'ble Supreme Court make it clear that Section 9 of CPC primarily deals with the question of Civil Courts jurisdiction to entertain a cause, until it is expressly or impliedly barred.
14. It is canvassed by the learned counsel for the appellant that under Section 36 (2) of the Tamil Nadu Societies Registration Act, the Civil Courts jurisdiction is barred. Hence, the suit filed by the respondent is not at all maintainable.

15. Now, we look into Section 36 of the Tamil Nadu Societies Registration Act.
"36. Power of Registrar to inquire into the affairs of registered society :
(1) The Registrar may, of his own motion or on the application of a majority of the members of the committee of a registered society or on the application of not less than one third of the members of that registered society, or if so moved by the District Collector, hold, or direct some person

authorised by the Registrar by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of that registered society.
(2) An application to the Registrar under sub-section (1) shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants have good reason for applying for an inquiry.
(3) The Registrar may require the applicants under sub-section (1) to furnish such security as he thinks fit for the costs of the proposed inquiry, before the inquiry is held.
....."

16. Under Section 36 of the Act, the Registrar may, of his own motion or on the application of a majority of the members of the committee of a registered society or on the application of not less than one third of the members of that society, or if so moved by the District Collector, hold, or direct some person authorised by the Registrar by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of that society; an application to the Registrar shall be supported by such evidence and that the Registrar may require the applicants to furnish such security as he thinks fit for the costs of the proposed inquiry, before the inquiry is held.
17. A careful reading of the Section 36 reveals no express bar to the Civil Courts.
18. It is also argued by the learned counsel for the appellant that once it is established that the requisite machinery is available, it shall be deemed as an implied bar to the Civil Courts.
19. Normally, where a special tribunal or a public body is created by or under the authority or an Act of the legislature for the purpose of determining the rights, which are the creation of the Act, then, the jurisdiction of the tribunal or of that body is, unless provided otherwise, exclusive, and Civil Court cannot take cognizance of such matter. The mere fact that a special sta tute provides for certain remedies may not, by itself, exclude the jurisdiction of the Civil Court to deal with a case brought before it in respect of some matters covered by the statute. Section 36 is merely an enabling provision. If the aggrieved party approaches the Registrar or on his own motion, then, it shall be lawful for the Registrar to conduct an enquiry and communicate the report of the enquiry. It does not mean to deem it as a bar to the jurisdiction of the Civil Court. There must be at least some implication to show that the Civil Court cannot entertain. I do not find any such provision available in the Act. Hence, I have no hesitation to hold that the jurisdiction of the Civil Court is not even impliedly barred.

20. An application was filed, pointing out the illegal claim of the appellant without requisite signatures of 1/3 members of the society, as contemplated under Section 36. As rightly held by the Courts below, the said

action would not mean that the respondent had invoked the provisions of Section 36 of the Act. Hence, the said application would not estop the respondent from filing the suit.

21. In this case, the respondent prayed for a declaration that he

continues to be the Secretary of the Society and for a consequential injunction only against the appellant herein. In order to establish his right, the respondent herein had rightly chosen the relief, by filing the suit. The document produced by the respondent before the Courts below would prove beyond reasonable doubt that he is entitled to the relief sought for in the suit.

22. For the foregoing reasons, all the three substantial questions of law are answered against the appellant.

23. Second Appeal, therefore, fails and is dismissed in limine. No costs. Consequently, the connected C.M.P.is also dismissed.

Index : Yes
Internet : Yes
dixit

To
1.The Principal District Judge,
Namakkal.

2.The Principal District Munsif,
Namakkal.